

# THE COMPLIANCE CONNECTION

REGULATORY NEWS FOR VIRGINIA MORTGAGE AND CONSUMER FINANCE COMPANIES  
STATE CORPORATION COMMISSION - BUREAU OF FINANCIAL INSTITUTIONS

FALL 2005



The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage, consumer finance and industrial loan association licensees, and other interested parties. It is the licensee's responsibility as a Virginia mortgage licensee to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, VA 23218-0640 or via email at [nancy.walker@scc.virginia.gov](mailto:nancy.walker@scc.virginia.gov).

Special thanks to Olena Bilay, Michael Beane, Susan Hancock and Russell Spain for their contributions to this issue!

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## Mortgage & Consumer Finance Licensees: Annual Reports

Mortgage lenders and/or brokers and consumer finance companies licensed by the Bureau of Financial Institutions are each required to file an Annual Report with the Bureau. These reports pertain to the business conducted and should not be confused with the corporate annual report (filed with the Office of the Clerk) required of companies. The annual report forms are being mailed to licensees in December 2005, however, copies of each type of annual report form are also available on the Bureau's Web site at: [www.scc.virginia.gov/division/banking/vareport](http://www.scc.virginia.gov/division/banking/vareport).

The due dates for the annual reports are as follows: Mortgage Annual Report - due by March 1, 2006; Consumer Finance Annual Report - due by April 1, 2006.

### Common tips for filing annual reports:

- 1) Strictly follow the instructions for each report. If you need assistance, call the individuals listed below;
- 2) File the report in duplicate;
- 3) Make sure the report is complete, signed by a senior officer of the licensee, and notarized;
- 4) Do not send money with the report. Assessments will be mailed to mortgage licensees by April 25, 2006 and to consumer finance licensees by May 1, 2006, with payment due within 30 days afterward.
- 5) Do not report business that is not conducted pursuant to the license granted, unless specifically requested. (For example, mortgage licensees should only report loans made to individuals who will use the proceeds primarily for personal, family or household purposes and which loans are secured by deeds of trust on any interest in one to four family, residential, owner-occupied property located in the Commonwealth);
- 6) Attach a financial report (audited, if available) for the licensee, including a balance sheet and income statement. (Each consumer finance licensee should also include a financial report, audited if available, for its parent company.) If audited reports are not available by the deadline, indicate with the submission of the annual report the date that the audited financial statement is expected to be filed;

**Submit the report to the Bureau by the deadline. The statutes governing the filing of the reports do not provide for extensions of time. Failure to file the annual report by the due date may result in regulatory action (fines or revocation of license).**

Annual reports are processed by the Bureau's Corporate Structure and Research Section. For questions regarding annual reports filed by mortgage companies, contact Robert Mednikov at (804) 371-9692. For questions regarding annual reports filed by consumer finance companies, contact Karen Heede at (804) 371-9372. General questions may also be directed to (804) 371-9690.

## Referral Fees

Despite comments and questions we've received from our mortgage licensees, **referral fees are still illegal** under the Real Estate Settlement Procedures Act (RESPA).

In a November 17, 2005 Housing and Urban Development News Release (number 05-160), a \$150,000 settlement with a New England mortgage company was announced. The settlement states that the company solicited and received tickets from certain settlement service providers to professional sporting events as well as music concerts and restaurant gift certificates in exchange for the referral of business.

RESPA was enacted in 1974 to provide consumers advance disclosures of settlement charges and to prohibit illegal kickbacks and excessive fees in the home buying process. Section 8 of RESPA prohibits a person from giving or accepting anything of value in exchange for the referral of settlement service business.

"RESPA can't be any more clear when it comes to the giving or receiving of 'things of value' in exchange for the referral of business – it's illegal," said Brian Montgomery, HUD's Assistant Secretary for Housing – Federal Housing Commissioner. "The message to the rest of the industry should be equally clear – we will not only investigate those who give, but those who receive kickbacks."

Licensees should review the requirements and prohibitions of RESPA and provide training to employees to ensure compliance. Information received by the Bureau regarding potential violations of Section 8 of RESPA may be forwarded to the RESPA Enforcement Office for further investigation.

## Prohibited: MERS® Fee

Section 6.1-330.70 of the Code of Virginia, which pertains to first mortgage loans, allows mortgage lenders to collect the "reasonable and necessary charges in connection with *making* the loan" (emphasis added). It is the Bureau's position that a MERS® (Mortgage Electronic Registration System) fee is not incident to the relationship between the lender and borrower, but rather arises out of the subsequent transfer of a loan from the lender to a third-party purchaser. Section 6.1-330.72 of the Code of Virginia also prohibits the collection of this fee on subordinate loans.

Thus, the collection of a MERS® fee will be cited as an overcharge violation during examinations of licensees and refunds to the affected borrowers will be required. Please adjust your company policies as needed to ensure compliance in future transactions.

## Independent Contractor vs. Employee?

We have seen many instances where licensees have reported compensation for mortgage brokering services (i.e., loan origination) by using Form 1099 rather than W-2. It is the Bureau's position that the reporting of compensation on Form 1099 demonstrates conclusively, for the purpose of licensing under the Mortgage Lender and Broker Act (MLBA), that the person compensated is an independent contractor. If that person acts as a mortgage broker, as defined under the MLBA, he must be licensed as such (unless he is exempt). Persons who violate the MLBA's licensing requirement are subject to (1) fines of up to \$2,500 for each day they



acted as a mortgage broker; (2) cease and desist orders; and (3) criminal referral to local prosecuting authorities (engaging in business as a mortgage broker without a license is a Class 6 felony). Furthermore, licensees who compensate unlicensed, non-exempt mortgage brokers are subject to (1) regulatory action (i.e., license suspension or revocation), (2) criminal referral to local prosecuting authorities, and (3) reporting of such practices to federal and state taxing authorities. Administrative Letter 1605, which was revised and reissued on September 30, 2002, also addresses this issue.

## **License Update**

The following is a list of companies that have surrendered their licenses, had their licenses revoked, had an application denied, or been fined by the Commission since August 15, 2005. This list should be helpful to keep track of companies with which you do business. These lists are accurate as of November 15, 2005. Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. A list of current mortgage licensees is available on our Web site at [www.scc.virginia.gov/division/banking/vamortgagelist](http://www.scc.virginia.gov/division/banking/vamortgagelist).

### **Mortgage Licenses Surrendered**

MB – 592 K. C. Mortgage Corporation – 8/19/05	MB – 2355 Millennium Mortgage Acceptance Corporation (Used in VA By Millennium Mortgage Services Corporation) – 9/21/05
MLB – 873 Core Mortgage Connection, L.P. – 8/26/05	
MB – 1262 Barksdale Business Group, Inc. d/b/a Barksdale Loan Consultants – 8/29/05	MB – 2311 Abacus Discount Mortgage, Inc. – 9/29/05
MLB – 772 First Rate Mortgage Group Inc. (Used in VA By: First Rate Mortgage Corp.) – 9/1/05	MB – 2709 Paul S. Pristak d/b/a PSP Financial Services – 9/29/05
MB – 2482 Consumer Plus Mortgage Corporation – 9/8/05	MLB – 421 Legacy Financial Group, Inc. – 9/30/05
MB – 1535 Family First Mortgage, Inc. – 9/9/05	MLB – 864 Priority Mortgage, Inc. – 10/10/05
MB – 2210 Patriot Mortgage LLC – 9/12/05	MB – 670 Countryside Mortgage Services, Inc. – 10/12/05
MLB – 993 Coastal Community Mortgage L.L.C. – 9/12/05	MB – 1946 United American Mortgage Corporation – 10/24/05
MB – 2391 Thomas J. Hahn d/b/a Hahn Mortgage Service – 9/14/05	MB – 2657 CorBanc Mortgage LLC – 10/31/05
MLB – 66 American Home Mortgage Servicing, Inc. d/b/a American Home Mtg Servicing – 9/21/05	MB – 556 Takoma Financial Services Inc. – 11/3/05
ML – 449 USMoney Source, Inc. d/b/a Soluna First – 9/21/05	MB – 1802 Olympia Funding, Inc. – 11/15/05
	ML – 490 HomeOne Credit Corp. – 11/15/05

### **Mortgage Licenses Denied**

MLB – 1158 Matrix Investment Corporation – 10/27/05	MLB – 1211 Quick Loan Funding Inc. – 11/1/05
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### **Mortgage Licenses Suspended**

MB – 670 Countryside Mortgage Services, Inc. – settlement order entered on 9/13/05 suspending license for period of six months from date of the order (license surrendered 10/12/05).

### **Fines Paid by Mortgage Licensees**

MLB – 679 Sunset Mortgage Company, L.P. – settlement order entered on 9/2/05 for \$15,000 for violations of various laws and regulations applicable to the conduct of its licensed business
MB – 1563 Loans and Mortgages, LLC – settlement order entered on 9/2/05 for \$7,500 for violations of various laws and regulations applicable to the conduct of its licensed business
MLB – 928 Apex Financial Group, Inc. d/b/a Aapex Mortgage – settlement order entered on 10/25/05 for \$500 for failure to obtain Commission approval prior to relocating an office, in violation of §6.1-416 of the Code of Virginia
MLB – 750 Novastar Home Mortgage, Inc. – settlement order entered on 11/2/05 for \$30,000 for violations of various laws and regulations applicable to the conduct of its licensed business

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## **Other Fines Paid**

- LIM Holdings, Inc. – settlement order entered on 10/25/05 for \$5,000 for failure to obtain Commission approval prior to acquiring more than 25% of the ownership of LowerMyBills, Inc. (MB - 2236) in violation of §6.1-416.1 of the Code of Virginia
- Phillip Siebert – settlement order entered on 10/25/05 for \$1,000 for failure to obtain Commission approval prior to acquiring more than 25% of the ownership of Paragon Home Lending, LLC (ML - 451) in violation of §6.1-416.1 of the Code of Virginia
- Interstate Credit Corporation – settlement order entered on 10/25/05 for \$2,000 for failure to obtain Commission approval prior to acquiring more than 25% of the ownership of Americorp Credit Corporation (MLB – 678) in violation of §6.1-416.1 of the Code of Virginia
- W.J. Bradley Company Merchant Partners, LLC - settlement order entered on 10/25/05 for \$2,000 for failure to obtain Commission approval prior to acquiring more than 25% of the ownership of Americorp Credit Corporation (MLB – 678) in violation of §6.1-416.1 of the Code of Virginia
- Phillip McCall – settlement order entered on 10/25/05 for \$500 for failure to obtain Commission approval prior to acquiring 25% of the ownership of Americorp Credit Corporation (MLB – 678) in violation of §6.1-416.1 of the Code of Virginia
- James M. Curry - settlement order entered on 10/25/05 for \$1,000 for failure to obtain Commission approval prior to acquiring more than 25% of the ownership of Key Financial Corporation (MLB – 1124) in violation of §6.1-416.1 of the Code of Virginia
- James E. Davis - settlement order entered on 10/25/05 for \$1,000 for failure to obtain Commission approval prior to acquiring more than 25% of the ownership of Southwestern Mortgage Corporation (MB – 1694) in violation of §6.1-416.1 of the Code of Virginia
- Raymond H. Starkes – settlement order entered on 10/25/05 for \$1,000 for failure to obtain Commission approval prior to acquiring 25% of the ownership of Residential Home Loan Centers, LLC (MLB – 1127) in violation of §6.1-416.1 of the Code of Virginia
- Alberto Leguizamon – settlement order entered on 10/25/05 for \$2,500 for failure to obtain Commission approval prior to acquiring more than 25% of the ownership of Embassy Mortgage, Inc. (MLB – 1142) in violation of §6.1-416.1 of the Code of Virginia

## **Settlements, Fines and the Literary Fund**

Ever wonder what happens to the money we collect through fines and settlements with our licensees? If you think we keep the money and spend it, you are mistaken. All money collected by the Bureau through fines and/or settlements is sent to Virginia's Literary Fund. This fund is a permanent and perpetual school fund that began in 1810 and was later established in the Constitution of Virginia. Revenues to the Literary Fund are derived primarily from criminal fines, fees, and forfeitures; unclaimed and escheated property; and repayments of prior Literary Fund loans. Recently, unclaimed lottery winnings were added as a source of the fund.



The literary fund is used to provide low-cost loans for school construction, grants under the interest rate subsidiary program; debt services for technology funding, and to support the state's share of teacher retirement.

The above information was obtained from the January 18, 2005 Status

Report by the House Appropriations Subcommittee on Elementary and Secondary Education.

## **Mortgage Orientation**

During the past year, space in our 100 seat courtroom has limited our ability to allow new licensees to bring more than one compliance representative. The Bureau has secured an alternative location for future sessions of our mortgage orientation if the number of new licensees continues to rise. A notice to companies licensed during the 4th quarter of 2005 will be mailed in January with details on how to register for the next session.



## It Pays To Be On the Right Side of the Law

Mortgage lenders and brokers with a good compliance record have their applications for additional offices and relocations processed more quickly. Although the Code of Virginia generally provides for a thirty day period for processing of these applications, the Bureau of Financial Institutions normally processes applica-

tions of licensees with a good compliance record within ten days, depending on the application volume.

An application shall be approved unless the Commission finds that a licensee has not conducted business efficiently, fairly, in the public interest and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed to the applicant within thirty days

of the date the application is received by the Commission. Delays in the approval process or denials are encountered in cases where applicable laws and regulations have been violated, as reflected in examination reports; an inordinate number of unresolved consumer complaints; failure to file the annual report for mortgage lenders/brokers (due March 1 annually); failure to pay assessment fees (due May 25 annually); failure to maintain a good standing status with the Clerk's Office of the State Corporation Commission; relocating or establishing offices without prior Commission approval; and failure to inform the Bureau of changes in directors and senior officers, as required by §6.1-416 of the Code of Virginia.

Compliance with laws and regulations simplifies and streamlines the regulatory process. It saves time and money, prevents interruption of services to the consumer and benefits everyone.

Any questions you may have concerning the application process should be directed to Deputy Commissioner Nick Kyrus or his staff at (804) 371-9690 (e-mail: [nick.kyrus@scc.virginia.gov](mailto:nick.kyrus@scc.virginia.gov)).



### Document Preparation Fees:

We continue to receive questions regarding the charging of document preparation fees in conjunction with **first** mortgage loans.

Section 6.1-330.70 of the Code of Virginia permits a lender to "require the borrower to pay the reasonable and necessary charges in connection with making the loan, including the cost of title examination, title insurance, recording and filing fees, taxes, insurance, including mortgage guaranty insurance, appraisal, credit reports, drawing of papers and closing the loan."

The Virginia State Bar's UPL Opinion 112, states that it is the unauthorized practice of law for a mortgage company to make a separate charge for the preparation of instruments affecting title to real estate in connection with a real estate mortgage closing. The opinion notes that §6.1-330.70 of the Code of Virginia "directs that the [mortgage] company may require the borrower to pay expenses reasonably related to the transaction; however, the parties receiving payment must be restricted to those who are legally entitled to make such charges."

Additionally, the Real Estate Settlement Procedures Act (RESPA) §3500.12 prohibits the imposition of a charge for the preparation of the HUD-1 or HUD-1A, escrow account statements, or statements required by the Truth in Lending Act.

**PLEASE NOTE:** In addition, mortgage licensees are prohibited by §6.1-330.72 of the Code of Virginia from charging document preparation fees in connection with subordinate mortgage loans (unless the loan is exempt under §6.1-330.73).



## IMPORTANT COMMISSION TELEPHONE NUMBERS



Licensing (applications, name changes, relocations).....(804) 371-9690

Consumer Finance and Mortgage Examinations ....(804) 371-9701

Consumer Complaints.....(804) 371-9705

Banks and Savings Institutions.....(804) 371-9704

Corporate Information – Clerk's Office.....(804) 371-9733

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Bureau of Financial Institutions

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**IMPORTANT REGULATORY INFORMATION ENCLOSED!**